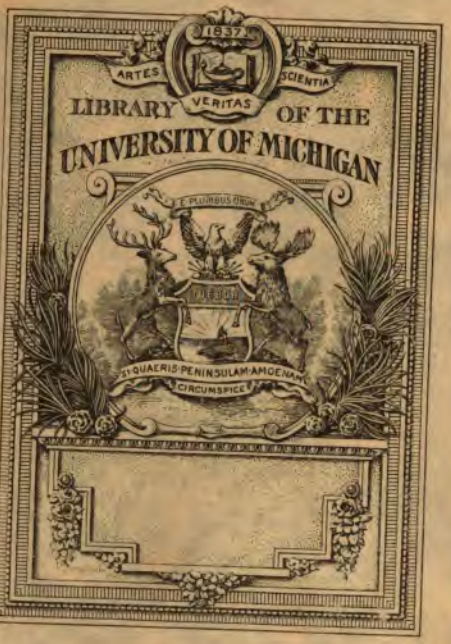
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Legal Studies

in the

University of Oxford

A VALEDICTORY LECTURE

DELIVERED BEFORE THE UNIVERSITY, JUNE 10, 1893

BY

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LEGAL STUDIES

IN THE

UNIVERSITY OF OXFORD

TWENTY-THREE years have passed since I entered on the duties of the Chair of Civil Law in this University: and to-day, in obedience to precedents of high authority, I come to say some parting words suggested by the experience of those years. They have been years full of experience for us all: and it may be not unprofitable that I should note the changes they have brought and endeavour to estimate the position which legal studies, and especially the study of the Civil Law, have now reached in the University and in the country.

Those changes have been many and momentous. Since 1870 the University has nearly doubled the number of its undergraduates and has greatly increased the number of its teachers. It draws men much more largely from the less wealthy classes of the people. A new college has been founded, and risen to prosperity: an old one has been refounded and enlarged. Two colleges for women have sprung up and taken firm root. Theological tests have been abolished: persons not belonging to the Church

of England as by law established have begun to resort freely to Oxford: two theological faculties belonging to unestablished religious bodies have come to dwell in our midst, and have received a courteous welcome. Nor have any of the unfortunate consequences predicted as likely to follow from the admission of Nonconformists been actually experienced, for there has been a diminution of theological controversy, a growing sense of friendliness and sympathy among Christians, a more assured peace in the minds of our students.

The examination system has been remodelled, with a regrettable but perhaps inevitable increase of complexity, as well as enlarged by the inclusion of new studies. The University and the Colleges have been dealt with by Parliament and by an Executive Commission: and the serious consequent evils have been not wholly uncompensated by gains. We have undertaken many new kinds of work. We provide University Examinations for Women, and we send zealous young lecturers everywhere through England to bring teaching of an academic type within the reach of the people.

As regards Law, while the degree of Doctor of Civil Law has become a true distinction by the requirement of a thesis of substantial merit instead of the former purely formal exercise, the B.C.L. examination (then scarcely serious) was made by the Statute of 1872 a reality: the standard both of honours and of the pass degree has steadily risen,

and this rise has been accompanied by an increase of candidates. It is probably now, I do not say the most difficult, but the best arranged and most practically useful law examination anywhere in the United Kingdom. In the years preceding 1870 there were seldom more than two or three entrants for this examination, almost absurdly easy as it then was: we have now usually upwards of twenty and sometimes twenty-five. Similarly the number of candidates in the B.A. Jurisprudence School has grown and the quality of the work has improved.

In 1868 there were only three Chairs in the Faculty of Law: those of Civil Law, Common Law, and International Law, besides the temporary Vinerian Readership; and of these that of Common Law was virtually in abeyance. In 1870 the work of the Corpus Professorship of Jurisprudence began with the lectures of that illustrious writer whose fame two Universities dispute, for if Cambridge reared him, Oxford gave him the occasion for teaching, Sir Henry Maine. In 1878 the Readership in Indian Law, and in 1881 that in Roman Law was founded and the opportunity taken of placing in it the learning, energy and zeal of a German civilian—Dr. Grueber—whose lectures have proved most helpful to us. In 1882 the Vinerian Chair of Common Law became (as we trust it will ever continue) a working chair by the choice of another distinguished man whose powers, always admired by his friends, are now recognized over the English-speaking world, and to

attracts in fully as large a measure the interest of the more intelligent among our students, and it can hardly be doubted that the excellence of the Law School in the future will largely depend upon its maintenance as a main element in both teaching and examination.

This is one of the points on which you may expect the results of a professor's experience to be stated; for it is a point upon which his attention must be constantly fixed, and I have had opportunities of studying it amid the din and dust of forensic practice in London no less than in the cloistered seclusion of Oxford.

In the Inaugural Lecture which I delivered here soon after my appointment, an attempt was made to treat this subject. It was there pointed out that the utilities of the Civil Law to Englishmen might be reduced to three heads. One was its connection with the main stream of the world's history from the time of Mithridates, the last formidable antagonist whom Rome overthrew in the East, to that of Mohammed, by whose first successors the East was torn from her grasp; and its influence, less conspicuous, but still considerable, upon the growth of opinion and the developement of institutions ever since. This is an aspect of the subject which, since it belongs rather to the historian than the lawyer, I shall not pursue further to-day, though subsequent reflection leads me to believe that its importance can hardly be overrated. The second utility

was to be found in the fact that Roman Law is the substratum of some branches of English Law, directly of the law administered in the Probate and Admiralty Division of the High Court of Justice, and indirectly of a good deal administered in the Chancery Division, in the further fact that it is the actual law of some of our colonies from which appeals come to the Privy Council, as well as the foundation of the law of Scotland whence appeals come to the House of Lords, and in the command which it gives of the law of modern continental Europe, since it is the basis of the systems that prevail in all those countries, and its knowledge is a sort of master-key to each and every of them. These circumstances—so I then argued—make it practically serviceable to the practitioner, and justify a man bent on professional success in devoting some time to its study. The third utility was to be found in its educational value, as forming the mind and training the aptitudes of the student devoting himself either to the theory or the practice of English law. On these latter two points it is proper to say a few words.

No man must rely largely on his own personal experience, but mine leads me to lay less weight than I then laid on the directly practical professional gain to be expected from a knowledge of Roman Law. In the course of a practice which during twelve years was tolerably large and somewhat varied, I remember no instance in which any business came to my

chambers in respect of any knowledge I might be supposed to have as specially conversant with the subject, and only a few cases in which that knowledge proved directly helpful in writing opinions or arguing before a Court. Once in addressing the House of Lords in a Scotch Appeal I discovered a pretext for quoting the Digest, which that august body received with grave approval, as not unbefitting their large survey of the matter in hand. It would be improper to dilate upon this aspect of the question, for a University is the last place in which the worth of knowledge ought to be measured by its merely gainful utility, or where our studious youth ought to be led to set their hearts upon immediate practical success. Still, if one is asked to deal with the point upon a hard utilitarian basis, I cannot allege that the advantage to be expected from the possession of this acquirement does more than counterbalance the impression which still prevails in the 'other branch of the profession,' that it is a little uncanny for a barrister to be known for anything except his knowledge of the English Law. Things might fall out differently for the young civilian to whom a judicious firm of solicitors vouchsafed a chance of getting into Canadian Appeal business or Admiralty business. But in such a world as the present, and more particularly at the bar, one cannot await chances or shape one's course with a view to them; one must seize those that come and float onwards with the tide. The ambitious

junior may desire to be employed in subtle questions of insurance law, but if briefs are offered him at the Old Bailey or in the Divorce Court, he will be wise to accept them, and to wait till his position is assured before he begins to pick and choose among the business which clients send. In the long run, no doubt, a man who knows Roman Law will find many cases in which, when he reaches the top of the profession, he can profit by that knowledge. But the main thing for the practitioner is to get a start; and it is not certain that any one will get this start sooner by being as good a civilian as we here can make him.

This, I repeat, is a sordid aspect of the matter; so let me hasten to correct any possible misapprehension by adding that as respects the third head of utility—that of the legal training which a study of Roman Law gives, I can dwell upon it with a confidence deepened by the experience of every year. Far be it from me to disparage the law of England as it was disparaged by the eager reformers of seventy or even of fifty years ago, impatient of the defects, many of them removed since their days, which then marred its noble proportions. It is a system worthy of all admiration for its humane spirit, for the sense of civic equality and personal freedom which pervades it, for its elastic power of adapting its provisions to the needs of the great communities that live by it, not here only but beyond the Atlantic and beneath the Southern Cross. Its faults

lie not in its substance but in its form. It is a system extremely hard to expound and hard to master. So vast is it and so complicated, so much are its leading principles obscured by the way in which they have been stated, scattered here and there through cases reported in a chronological order, which is the perfection of disorder, so much have many of its main doctrines been cut across and (so to speak) dislocated by modern Statutes, that it presents itself to the learner as a most arduous study, a study indeed which only a few carry so far as to make themselves masters of the whole body of our working rules. Roman Law, on the other hand, is not only simpler, since it wants those differences between real and personal property, and between legal and equitable rights to which so much of our English complexity is due, but more limited in its range, large modern departments, like those of company law and insurance law and negotiable instruments, being absent. It is therefore a subject the whole of which the student can more easily bring under his eye, seeing the various parts in their relation to one another. What is of still higher import, the Roman Law is symmetrical and coherent. Each part not only has, but displays, its organic relation with every other part. The writings in which we possess it are of moderate bulk, not larger than the English Law Reports of the last four or five years, and not a two-hundredth part of the total volume of our Reports.

Much less than half of these writings is now of practical consequence to us, for the remainder, though interesting historically, deals with matters not significant to the modern lawyer. But the fraction which still concerns us is of the highest possible merit. In it one may find nearly everything that is of practical value in the field of general jurisprudence, theoretic or analytic. The legal conceptions set forth are those upon which all subsequent law has been based; and nearly all of them find their place in our own system, which they have largely contributed to mould. Two of the Roman text-books deserve special mention. The Institutes of Gaius is a model of vigorous precision and lucidity, an elementary treatise to which we have nothing comparable. The Digest of the Emperor Justinian, containing short extracts from a number of the most eminent legal writers of earlier times, has excited the admiration of all succeeding generations by the concise, delicate, and philosophical way in which principles are set forth and points of detail investigated. Its contents are philosophical, not in the sense of being abstract, but in the firm grasp of principles, and the refined exactitude with which every principle is applied. No rules could better conform to the three canons of good law, that it should be definite, self-consistent, and justly adapted to the practical needs of society. No study can be better fitted to put a fine edge upon the mind, or to form in it the habit of clear logical thinking.

In England we have nothing similar, and although the study of case law may be made, and has sometimes been made in the hands of a skilful teacher, as good a training in subtlety and exactness as the Roman Law or indeed as the scholastic logic of the Middle Ages, the immense bulk of our cases makes it difficult to pursue such a method over the whole field which a learner ought to cover.

'Nevertheless,' some one may say, 'even if the merits claimed for the Roman system be admitted, it is not our system, and you are doubling the learner's labour. Why should he add to the time and toil that the study of English Law needs, the time and toil, less though it be, needed for mastering the Roman? Why attempt both, when one alone is, on your own showing, so arduous?'

The answer is that the learner will make quite as rapid progress with English Law if he has begun with Roman as if he proceeds to break his teeth from the first upon the hard nuts of our own system. Two men start together after taking their B.A. degree. One gives a year to Roman Law and the two next to English. The other devotes to English the whole three years. At the end of the three years the first will know as much English Law as the second. He may not have covered so much ground or got at his fingers' ends the names of so many cases, but he will know what he does know—nor will it be much less in quantity—more thoroughly and rationally. The explanation is twofold. In

learning Roman Law, one learns the elements of law in general, and therefore of English Law also, these elements being more easily learnt from Roman sources, than they could be in the form they have taken among ourselves. And in learning Roman Law one obtains a means of testing one's comprehension of the real meaning of English terms and the nature and compass of English rules, which deepens and strengthens the learner's hold upon his knowledge. The main difficulty which besets students till they have had a good deal of actual practice is to turn into the concrete the rules they have learnt in the abstract, or as a Roman lawyer says, 'Leges scire non est verba earum tenere sed vim atque potestatem.' The study of reported cases is a valuable aid in grasping the practical application of rules, but cases are complicated by many details extraneous to the principle. When, however, a man has so mastered the main outlines of Roman Law as to be familiar with its conceptions and understand the application of its leading rules, he is naturally and almost necessarily led in his study of English Law to compare the conceptions and rules he finds there. His text-book tells him, for instance, that the English rule regarding the passing of the ownership of an object sold, is such and such. What is the Roman rule? If the two rules agree, he remembers the English better. If they vary, he is led to ask why; and he obtains a juster view of the origin, bearings, and range of the English rule from perceiving wherein it

differs from the Roman. If any one thinks there is a risk of his confounding the two, and becoming muddled between them, I can only say that I have never known this happen, partly, perhaps, because in dealing with Roman Law one thinks in Latin, and expresses in its technical terms the result one arrives at. On the contrary, the student gets a clearer and sharper view of the grounds of every doctrine, and of its precise compass, than he could get from studying either system by itself. It is as when in studying a foreign language one translates constantly backwards and forwards into one's own, and obtains thereby both a finer perception of the idioms of both, and a more exact comprehension of the substantial meaning of every sentence that is so translated.

I may be reminded that the advantage here claimed does not apply to all departments of Roman Law alike, but to those only which cover the same field as our own Law. The remark is true, and draws with it a practical lesson which teachers of Roman Law ought not to forget. The subject has two aspects. Besides its intrinsic scientific interest as a vast and harmonious system, it has a historical aspect for the scholar and the student of institutions: it has a practical or professional aspect for the lawyer. Different parts of it are especially interesting to one or other of these classes. Much of the law of persons, of crimes, and of procedure, while it engages the curiosity of the scholar or historian, is

too remote from modern conditions of life to attract, or to profit, the jurist of to-day. What he will chiefly value are the parts that deal with the law of Property, including Inheritance (though even in this there is a good deal of merely historical interest) and of Obligations, together with some parts of the law of persons, such as marriage and guardianship. These are, I venture to suggest, the parts on which the teacher should here in England expend his efforts, for it is in these that the comparison with English Law is chiefly instructive. I do not disparage the intrinsic claims of Roman Law in saying that what after all the greatest number of English students must be bent on is the mastery of the science and art which they are to follow as professional men. I have sought to prove that they will be better English lawyers by being also Roman lawyers. But we must not forget the goal they have to aim at. We must pass by the antiquarian details which occupy a considerable part of the Roman text-books, and even of the modern German text-books; we must fix our eyes and their eyes upon those subjects in which English and Roman Law reciprocally illumine one another, and must make the teaching of each subserve the teaching of the other. This view has always governed my own efforts—most imperfect as I regretfully own them to have been. I have always led the student through districts from which the parallel territories of English Law were in full view, and have carried him

constantly to and fro across the border. And if I may, without transgressing a Roman rule, give a legacy to a person not yet ascertained, I will bequeath to my successor, whoever he may be, this maxim as the best practical result of my experience—that Roman Law must always be so taught as to be brought into the closest and most constant relation with English Law, since it will thereby become not only more helpful but more enjoyable to both learner and teacher. In the opportunities for such placing the two systems side by side lies the one great advantage which English and Anglo-American civilians enjoy as compared with their continental brethren. To the latter the Roman Law is the basis—in some countries it may even be called the modified substance—of the current law. To us it is a parallel system with which comparisons can be made. These comparisons are eminently fertile in elucidation of the past condition of the civil law, in criticism of its present condition, in suggestions for the future. To no scholars is the early history of the Roman Law at once so easily comprehensible and so instructive as to us in England, because the history of our own law is full of beautiful analogies therewith. So no jurists are better able to estimate the value of Roman doctrines on many principles of contractual law, because our system has developed independently, and illustrates the Roman equally where it differs and where it agrees. We cannot pretend to rival the

work which the great Germans, men like Savigny and Vangerow, Ihering and Windscheid and Mommsen, have done for the investigation and exposition of Roman jurisprudence, ancient and modern. But our detached position gives us a perspective and a freshness of critical insight, perhaps even a means of comprehending things by reading our own experience into them, which continental scholars sometimes lack, and of which, one trusts, due use will some day be made. For I cannot doubt, looking not only to the progress of the study in England, but to its rapid and solid growth in the Universities of America, that the study of the Roman Law, once so nearly extinct among us, is now destined to shine with a steady light for generations to come.

I had intended to review, in connexion with the progress of our own law school, the changes which have passed on the aspects of legal science in England within the last thirty years. Two among them give cause for regret, the decline of interest in projects of codification, once so attractive to reformers, and the growing despondency wherewith attempts to amend our legal procedure are now regarded, a despondency probably due to the very imperfect success which has attended those Judicature Acts from which we hoped so much twenty years ago. Against these grounds of disheartenment I should have set the increasing zest wherewith the comparative method is being historically applied to the investigation of the origin of law and

of political institutions, and should have dwelt on the revived study of primitive custom as the foundation of those institutions, as well as on the more active discussion of constitutional questions generally, whether foreign, or American, or domestic, and the vigour which so many of our younger writers show in examining the ethical and economic bases and grounds of law, with views wider and more sympathetic, if also more suffused by the moist light of emotion, than were those which many of us drew from the utilitarians of the last generation. But these topics would lead me too far afield; it is for the present enough to observe two happy changes which we have ourselves seen—one, the warmer interest which Oxford displays in the problems that engage the attention of social reformers and the willingness she shows to aid practically, so far as she can, in their solution; the other the much larger share which the jurists and constitutional students, as well as the economists, of America and the British colonies have come to take in all these discussions. As our books are known and conned beyond the ocean, so here we read and prize colonial writers like Todd and Hearn and Bourinot; and we find in an American magazine, the *Political Science Quarterly*, an excellently conducted organ, such as Britain has not yet been able to provide, for the discussion of a whole class of legal and constitutional questions. As our isolation from Continental Europe is less marked than it was half a century ago, so still more

conspicuously does the intellectual and moral unity of the British people dispersed throughout the world stand forth to-day in a clearer and fuller light.

Let us turn back to consider what still remains to be done to give this law school, now firmly established in the University, its due hold upon the legal profession and its due opportunities of promoting the progress of legal science. None of us can be blind to its present deficiencies. We have accomplished less than we hoped in raising up a band of young lawyers who would maintain, even in the midst of London practice, an interest in legal history and juristic speculation. The number of persons in England who care for either subject is undeniably small, probably smaller, in proportion to the size and influence of the profession, than in any other civilized country; and it increases so slowly as to seem to discredit the efforts of the Universities. Of those who have undergone our law examinations comparatively few have either enriched these subjects by their writings—the books I enumerated a few minutes ago are, with one exception, the works of men who passed through the school of Literae Humaniores and not that of Law—or have become teachers among us, or have taken any part in promoting legal studies elsewhere[1]. How is this deficiency, which ought to be candidly confessed, to be explained? No one will lay it at the door of the University and College teachers,

[1] A very few names occur to me of persons who have so written or taught, but I abstain from mentioning these lest I should omit others.

whose eminent services have been already referred to. To me it seems chiefly due to the following causes, causes which I mention because they may all be removed. One of them is the short-sighted and perhaps somewhat perverse unwillingness of the authorities who control admission to practice in both branches of the profession in London, to give full recognition to our Oxford Law Examinations and Degree. Were the tests we apply so recognized as to relieve one who had passed them from all examinations for admission either to the bar or to practice as a solicitor, except such examinations as may turn upon those purely practical matters which can only be learnt in a barrister's chambers or a solicitor's office, a strong motive would be supplied to men destined for the profession to pursue their legal studies and take their legal examinations here, where we may without vanity say that we understand both teaching and examining much better than they do in London. Needless to add that we should be perfectly ready to allow the London authorities every means of satisfying themselves of the character of our examinations, as the Medical Council supervises the medical examinations of the various medical bodies. A second cause lies with ourselves, in our own examinations. Not only do they cramp the teacher, practically debarring him from some topics; but they are so arranged as to prevent the Law School from receiving, with some few exceptions, men of the first intellectual rank. The ablest and best prepared of our

students naturally, and rightly, enter the classical school, and find themselves obliged, when they have obtained their degree in it at the age of twenty-three, to quit the University for the work of life. Do not suppose that I for a moment desire to draw such men away from the classical school. No one who has himself passed through the training of that school will doubt its superior value to even the best-arranged Law School, as a part of the education needed to make a good scholar, a good citizen, and a good Christian. What we want is such a revision of our arrangements as will bring men to the University at seventeen instead of nineteen, and will enable those who have obtained honours in the school of Literae Humaniores, and intend to follow the legal profession, to pass into the Law School when they have taken their B.A. classical honours, and devote at least a year (though in the Law Schools of America two years at least are thought needful) to professional legal studies. At present we are in the absurd position of practically excluding from the legal instruction which the University provides the most promising of our students, the very men who are best fitted to turn it to account in their subsequent career. They spend at school a year or two which they ought to spend at college, and they spin out their general studies so long that they are unable to obtain that scientific training in the future work of their life which the University has been at such pains to set before them. To

find time and make provision in our curriculum for professional as well as general literary studies was one of the chief problems which the Commissioners of 1878–81 ought to have dealt with. Their failure throws back upon ourselves the duty of reform. Other, though less material, causes may be found in the undue prominence which examinations have been suffered to take in our system, and in the very unsatisfactory relations between the teaching provided by the University and that which the Colleges supply, relations which involve much overlapping and a serious waste of teaching power.

I need not pursue this topic into its details. Let it suffice to remark that it is not merely for the sake of the University that one would desire to see her influence upon legal studies extended. Over and above that general liberal education which it is her main business to give, and on which neither law nor any other special study must be suffered to infringe, it is her duty to handle professional studies in a wide and philosophic spirit, to raise them above mere gainful arts into the domain of science, to draw to herself the ablest of those who are entering these professions, the men from whom each profession receives its tone and temper. You all know how much the practical sciences, such as medicine, chemistry, and engineering, have gained by being closely associated with the pursuit of abstract science. No less true is it that men who follow these occupations, and those who devote themselves

to the bar or to the church, profit by their association with literary and scientific culture and its central home here, feeling themselves members of a great learned corporation, and carrying away with them the influence of the ideals it has taught them to cherish. It is upon the clergy that this influence has hitherto told most; nor has anything done more to keep the clergy from becoming a caste and to stimulate that activity in the fields of philosophic and historical research in which they have won so much distinction. One would like to see the University lay the same hold on the other great professions likewise.

This, however, is only one of the points in which observers who have watched and studied Oxford from without as well as from within are disposed to think that she does not fully comprehend, does not at any rate fully use, her unrivalled opportunities. I touch upon a delicate point. Yet as Homer occasionally invests a dying warrior with prophetic gifts, one who is on the eve of departure may be permitted to give expression to some of the aspirations that have long filled his mind when he has thought of what Oxford might achieve. She seems at present to be too exclusively occupied not only with the giving of a general liberal education (to the disparagement of professional studies), but also with her regular curriculum and those who follow it, to the neglect of those others, now comparatively few, but capable of almost indefinite increase, who desire

not so much to follow a regular course or secure a degree as to obtain special training in some department of learning. Have we not, in our English love of competition and our tendency to reduce everything to a palpable concrete result, allowed the examination system to grow too powerful, till it has become the master instead of the servant of teaching and has distracted our attention from the primary duty of a University? It is not any revolutionary change one would desire to see. Such changes are seldom either easy or salutary; while as regards the college system, I find much to regret in those serious inroads upon the social life and corporate character of the colleges for which the last Commission is responsible. The reform chiefly needed is a reform that would neither injure the Colleges nor affect the character of the University as a seat of general liberal education. Rather let us return to the older conception of Oxford as a place to which every one who desired instruction might come, knowing that as she took all knowledge for her province she would provide him with whatever instruction he required. The abundance and the cheapness of literature have not diminished, perhaps they have even stimulated, the demand for the best oral teaching, while the recent establishment of so many prosperous colleges in the great towns, the spread of University Extension lectures, the growth of Science schools, have immensely increased the number of young men

who would come hither for a year or more to obtain such teaching were they sure of finding it. What is the present position? We have professors, many of whom, eminent as they are, cannot secure proper classes, because the undergraduates are occupied, under the guidance of the college teachers, in preparing for degree examinations. For the teaching of some important branches, especially in natural and in economic science, we possess no adequate staff. We have been outstripped not only by Germany but also by the United States, in the provision of what the Americans call Post Graduate courses, a provision which even our present poverty need not hinder us from making, were but a reasonable system of fees introduced and revenues husbanded that are now unprofitably spent. Both the new University teachers whom we might create and the present professors to whom our system refuses hearers would be only too happy to give those courses, if the students could be found and the requisite arrangements made. The men who would attend the courses exist, some of them within, many more without the University. Those without do not come because we have not offered the courses: and to provide for both sets we must remodel our existing arrangements, which contemplate only the normal undergraduate who arrives at nineteen, is examined, and departs at twenty-two or twenty-three, and take no account of those who desire neither examinations nor degrees, but

simply to perfect themselves in some department of science or learning. Were such courses offered, and were those antiquated arrangements altered, we might soon expect a large afflux of students, not from England only, but from far beyond the bounds of England. Perhaps we in Oxford have scarcely yet realized the magnificent position our University holds, as not only the oldest and the most externally beautiful and sumptuous place of education in the English-speaking world, but as a place whose name and fame exert a wonderful power over the imagination of the English peoples beyond the sea, many of whose youth would gladly flock hither did we encourage them to do so by arrangements suited to their needs? For those among the studious youth of the United States and Canada who desire to follow out their special studies, I can safely say from what I have seen of Canada and the United States that did Oxford and Cambridge provide what the Universities of Germany provide, and were it as easy to enter here and choose the subject one seeks to study as it is in the Universities of Germany, it is to Oxford and Cambridge rather than to Germany that most of them would resort: nor could the value be overestimated of such a tie as their membership here would create between the ancient mother and the scattered children, soon to be stronger than their mother, but still looking to her as the hallowed well-spring of their life.

Like the Plataean captives in Thucydides, I have been tempted to delay by these observations the moment when my official life here must close and my last professorial words be spoken. It is always sad to part from work with which the best years of one's life have been largely occupied, and to me this common regret is deepened by the associations, full of antique dignity, of the office I am resigning, and by the nature of the work, which has been to me—except indeed that ornamental part of it which is attempted amid indecorous noise in the theatre at Commemoration—a source of unfailing pleasure.

A few friends, influential in the University, have sought to dissuade me from retiring by the argument that it may be of advantage to the Faculty of Law to have among its members one who, being resident in London, is in contact with the legal profession and its leaders, and may occasionally be even of advantage to the University to have in Parliament one who has that familiarity with her needs and conditions which constant visits and practical experience in teaching and examining ensure. But whether these advantages be real or not, I have for some years past begun to feel that they can in no event balance the gain to both Faculty and students of having a resident professor, with his whole time and thoughts devoted not only to his teaching work but to the copious learning of the subject. As I have never found the time to write the various books on Roman law I had from time to time planned, let me say a word

of what I have sought to do in the way of turning to account those very occupations as a practising counsel and a traveller which debarred me from literary production. Never before has there been occasion to speak of the principles on which I have tried to discharge the duties of this office, but this is my expiring swan song, in which such references, since they can never come again, may be forgiven. The aim I have pursued in class teaching has been to treat the Civil Law as a practical working system, full of life, not only because it is preserved to us with lifelike detail, but also because it is still actually in force as the operative law of some countries, full therefore of direct instruction and suggestion for ourselves, capable of being used to enlarge English conceptions or indicate useful modifications of English rules. I have usually passed by what may be called its antiquarian aspects, not from want of interest in them, but because the object of quickening the interest and training the intellect of the *cupida legum iuventus* seemed more urgent. And in the public lectures which I have from time to time delivered before the University, I have endeavoured to develope and illustrate the wider historical relations of the law of Rome, and to connect it, sometimes in the letter, sometimes in the spirit, not only with the history of the Empire and the Church, but also with the problems of abstract jurisprudence, with political ideas and constitutional forms, with the legal institutions of peoples remote in

time, like the primitive Icelanders, or dissimilar in race and habits, like the Mussulmans of the contemporary East, with current questions on which Roman experience sheds light, such as the law of Marriage and Divorce, with the enterprises of modern law-makers, like the Legislatures of the States of North America or the rulers of British India. Sometimes I may seem to have strayed beyond the strict limits of my Chair. I have then fallen back on the ancient adage *Roma caput mundi regit orbis frena rotundi*, and have feigned for the Imperial law a continuance of its oecumenical authority. The Roman law is indeed still worldwide, for it represents the whilome unity of civilized mankind. There is not a problem of jurisprudence which it does not touch: there is scarcely a corner of political science on which its light has not fallen. How far, both as a teacher and otherwise as a University official, I have come short of the ideals of my youth, no one can be so sensible as I am. It is only a divided mind and a limited allegiance that I have been able, especially of late years, to give to the duties of this Chair: and I have, perhaps, loving the University and my subject, clung too long to the hope of being able to cultivate the life of study and teaching along with that of one immersed in civil work and strife, one who *insanum forum et populi tabularia vidit.* I must now regretfully own, that growing older, and finding myself less and less able to keep abreast of the literature of a subject which demands the

devotion of a man's full powers, there is no course for me but to leave this Chair, ennobled by so many traditions from earlier centuries, to one who will give himself wholly to it and maintain those traditions better than I have been able to do. My regret at parting is the keener because I part from the place where I have known and lived with so many of those brilliant figures whom the last twenty years have taken from us, one of them happily still in the world, though long since lost to the University which his splendid powers adorned,—I mean Mr. Goldwin Smith,—the rest now living only in our recollection. Vividly there come back to me as I stand by the open gate, the kindly wisdom of the late President of Corpus, most loveable of men, the luminous and fertile intellect of Sir Henry Maine, the masculine force and high sense of public duty of Thomas Green, the penetration and learning, not more wide than exact, of Mark Pattison, the fine taste and golden lips of Henry Liddon, the warm heart and vehement discourse and noble love of truth of Edward Freeman, the fire, the courage, the eagerness, the zeal in all good causes of one whose university lectures and sermons were so powerful a stimulus to many of us in our undergraduate days, Arthur Stanley. These men had some sharp contests in their lives, but they are all alike enshrined in our memory as men of whom the Oxford of those days may well be proud.

Nor must a word of grateful farewell be omitted

to those colleagues in the Faculty of Law—among whom I will venture to reckon the Warden of All Souls—whose thoughts and plans it has been a constant pleasure to share, and with whom I have lived these many years in a friendship which no cloud of personal disagreement, nor any divergence of political opinions, has ever for a moment darkened. With the regret of parting I carry away the delightful recollection of those years, and a sense which time will not diminish of the honour it has been to be permitted so long to serve this great University, the oldest and most venerated of the dwellings of learning in Britain, dear to us not only because our brightest years were spent among her towers and groves, but still more because in her, as now in maturer life we scan a sometimes troubled horizon to watch for signs of storm, we see an institution which has stood unshaken while dynasties have fallen and constitutions have been changed, and which still and always, placed above the shock of party conflicts and renewing her youth in fresh activities from age to age, embodies in visible and stately form the unbroken continuity of the intellectual life of our country, and still commands, as fully as ever in the past, the loving devotion of her children.

THE END.

Oxford

HORACE HART, PRINTER TO THE UNIVERSITY